

REMARKS

Applicant respectfully requests reconsideration of the present application in view of the foregoing amendments and in view of the reasons that follow.

I. Claim Status

Claims 22 and 42 are currently amended, in accordance with the result of the telephone interview with Examiner Luan Van, described below. Claims 39-41 and 43-51 are canceled without prejudice or disclaimer. Claims 52 and 53 are being added. No new matter is added as a result of the amendment or addition. Support for amended claims 22 and 42, and new claims 52-53 can be found in the specification, for example, on page 25, paragraph 74 and figure 5E. Upon entry of the amendment, claims 22-33, 35-38, 42 and 52-53 will be pending for examination on the merits.

II. Telephone Interview

Applicants appreciate Examiner Luan Van for his time in conducting a telephone interview on June 26, 2008, for the present application. During the interview, Applicants' representative stated that the Okhura reference does not lead one skilled in the art to anodize a substrate multiple times under different conditions to arrive at nanopores within separated cells, as claimed. The Examiner, however, disagreed and maintained his position that, given Okhura's teaching, one skilled in the art would have chosen multiple process conditions for the same substrate. The Examiner further stated that the nanopores of Okhura could be grouped to qualify as the claimed cells. When directed to page 25, paragraph 74, and to Figure 5E, describing nanopores arranged within larger macropores (cells), the Examiner stated that Okhura appears not to suggest the cell and nanopore arrangement described there, pending further search and examination.

III. Claim Rejection – 112, First Paragraph – of Claims 39-41, 43 and 44-46

Claims 39-41, 43 and 44-46 are rejected under 35 U.S.C. § 112, first paragraph, as allegedly not complying with the enablement and written description paragraph. Office

Action, pp. 2-4. Applicants respectfully submit that these rejections are rendered moot by the cancellation of the instant claims.

IV. Claim Rejection – Anticipation – of Claims 47 and 50

Claims 47 and 50 are rejected under 35 U.S.C. § 102(e) as allegedly anticipated by Okhura et al. (US 6,610,463) (“Okhura”). Office Action, pp. 4-5. Applicants respectfully submit that these rejections are rendered moot by the cancellation of the instant claims.

V. Claim Rejection – Obviousness – of Claims 22-27, 32, 36-38 and 42

Claims 22-27, 32, 36-38 and 42 are rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over Okhura. Office Action, pp. 6-9. Applicants respectfully traverse this ground of rejection.

Revised claim 22 is directed to two separate anodizing steps, each performed under a different condition. Under “a first condition,” a plurality of nanopores are formed and, under a “second condition,” a plurality of cells are formed, each cell being a macropore further comprising nanopores. The specification, on page 25, paragraph 74, describes an example of this process. In particular, the specification states “[i]f the nanopore array is anodized at a higher voltage to form macropores, than that used to form the nanopore array, then the single domain nanopore array is separated into a plurality of cells before or after forming the nanopores.” Applicants respectfully submit that Okhura does not teach or fairly suggest claim 22.

As most, Okhura teaches that different process conditions can be used. See, e.g., col. 7, ll. 50-57. This description is directed to the fact that one condition out of many can be chosen to anodize a substrate. It does not, however, suggest using multiple process conditions on the same substrate, much less suggest using different conditions to create nanopores within larger cells, as claimed. Accordingly, Okhura fails to fairly suggest the claimed process of applying “a first condition” and “a second condition” such that nanopores are formed within cells.

Applicants therefore respectfully request that the rejection of claims 22-27, 32, 36-38 and 42 be withdrawn.

VI. Claim Rejections – Obviousness – of Claims 28-31, 33 and 35

Claims 28-31, 33 and 35 are rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over Okhura in view of Zhang et al. (US 6,709,929) (“Zhang”), Iwasaki et al (US 6,278,231) (“Iwasaki”) and/or Sekinger et al. (US 5,975,976) (“Sekinger”). Office Action, pp. 9-12. Applicants respectfully traverse these grounds of rejections.

Okhura has been described, *supra*. Neither Zhang, Iwasaki nor Sekinger describes or fairly suggests the steps of “anodically oxidizing said first material under a first condition to form the nanopore array with the controlled first pattern in the anodically oxidized first material; and anodically oxidizing said first material under a second condition to form a plurality of separated cells, wherein nanopores are located in the separated cells; and wherein each cell is a macropore,” as claimed. Accordingly, Zhang, Iwasaki and Sekinger do not remedy the deficiencies of Okhura.

Applicants, therefore, respectfully request that the rejection of claims 28-31, 33 and 35 be withdrawn.

VII. Claim Rejections – Obviousness – of Claims 39-41, 43-46 and 48-51

Claims 39-40 and 43 are rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over Matsuda et al. (US 6,139,713) (“Matsuda”) in view of Sprintschnik et al. (4,566,952) (“Sprintschnik”). Office Action, pp. 12-13. Claim 41 is rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over Matsuda in view of Sprintschnik, and further in view of Okhura. Office Action, pp. 13-14. Claims 44-46 are rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over Kambe et al. (US 2003/0031438) (“Kambe”) in view of Matsuda. Office Action, pp. 14-15. Claims 48-49 and 51 are rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over Okhura in view of Iwasaki. Office Action, pp. 15-16.

Applicants respectfully submit that these rejections are rendered moot by the cancellation of the instant claims.

CONCLUSION

Applicants submit that the present application is in condition for allowance, and they request an early indication to this effect. Examiner Van is invited to contact the undersigned directly, should he feel that any issue warrants further consideration.

The Commissioner is hereby authorized to charge any additional fees, which may be required under 37 C.F.R. §§ 1.16-1.17, and to credit any overpayment to Deposit Account No. 19-0741. Should no proper payment accompany this response, then the Commissioner is authorized to charge the unpaid amount to the same deposit account. If any extension is needed for timely acceptance of submitted papers, then Applicants hereby petition for such extension under 37 C.F.R. §1.136 and authorize payment the relevant fee(s) from the deposit account.

Respectfully submitted,

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